

## **REMARKS/ARGUMENTS**

### **I. Status of Claims**

- a. Claims 1, 3-5, 7-13, 15-17, 26 and 31 are pending in the application.
- b. Claims 1, 12, 13, 16, 26, and 31 are independent claims.
- c. Claims 1, 3-5, 7-13, 15-17, and 31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vilsmeier et al. (US 6,611,700) in view of Danisch (US 6,127,672), or non patent literature Measureand Inc.
- d. The following comments will be made with reference to the published Patent Application for this case, United States Patent Application Publication No.: US 2002/0087101 A1.

### **II. Claim Rejections - 35 USC § 103(a)**

Claims 1, 3-5, 7-13, 15-17, and 31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vilsmeier et al. (US 6,611,700) in view of Danisch (US 6,127,672), or non patent literature Measureand Inc.

As noted in the Amendment dated Nov. 15, 2007, "Applicant realized that an important aspect of the presently disclosed invention may not have been adequately claimed. Mainly, that external curvature data be used to derive a frame of reference for a 3-D internal image set of a patient. This relationship may then be used to assist surgery or therapeutic intervention(s) on the patient." To explicitly claim this aspect of the invention, independent claims 1, 12, 13, 16, and 26 were amended to add a limitation to "... relate the curvature of the first

non-invasive curvature sensor to the location of the imageable fiducials and a 3-D internal image set of the patient.” (See Amendment dated Nov. 15, 2007, pg. 10, paras. 1 - 2). Applicant thanks the Examiner for stating in the Office Action dated February 5, 2008 that this amendment more accurately claims the invention.

After stating that “Vilsmeier does not explicitly teach a non-invasive curvature sensor that provides external curvature data and a 3D internal image set,” the Examiner declared that “medical devices for the application of therapeutics on a patient that has a non-invasive curvature sensor that provides external curvature data and a 3D internal image set, are conventional in the art as evidenced by the teachings of Danisch (6,127,672) and non-patent literature Measurand Inc.” (Office Action, Pg. 3, Para. 2). Specifically, the Examiner indicated that the Claim limitation “3D internal image set” is taught by Measurand Inc. (*See id.*).

In support of this statement, the Examiner noted that “... the non-patent literature Measurand Inc., uses a fiber optic based 3D bend and twist sensor, that knows where it is continuously along its length, providing accurate position and orientation information, even when in partial or variable contact with an object or person. It can be used on its own, built into or attached to a structure, or attached to a person to form real-time 3D computer images and collect data corresponding to complex shapes 3-D motion data images are created which

later can be edited using software that relates the curvature data with 30 images to create a 3D surface.” (Office Action, Pg. 2, Para. 4). However, Applicant notes that Measurand only discloses external 3D image sets, whereas, the presently claimed embodiments “... relate the curvature of the first non-invasive curvature sensor to the location of the imageable fiducials and a 3-D internal image set of the patient.” (Appl., Claim 1)

Therefore, because Measurand does not disclose a “3D internal image set,” withdrawal of these rejections is respectfully requested.

### ***III. Conclusion***

For all of the reasons advanced above, Applicants respectfully submit that the application is in condition for allowance and that action is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' agent at the telephone number shown below.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 503212.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for an extension for time, the Commissioner is

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requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 503212.

Respectfully submitted,

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